
Effective: August 1, 1997

96.00 Utility Accommodation
96.08 Environmental Conditions**Supersedes:** April 1, 1995

By: Director, Bureau of Highway OperationsPage 1 of 4

A. Introduction

This policy specifies responsibilities and the procedures that a utility shall follow when environmental conditions are encountered in the right-of-way. These conditions include, but are not limited to: 1) archeological sites, 2) historic structures, 3) contaminated soils, 4) underground storage tanks (USTs), and 5) leaking underground storage tanks (LUSTs).

B. Department Responsibility

Under Trans 220, the Department shall notify a utility when its facilities may be affected by a proposed improvement project. If the utility confirms that its facilities are in the vicinity of the improvement, then the Department shall mail the utility at least that portion of the improvement plan that concerns those facilities. The Department shall also provide any additional and duplicate plan information needed by the utility to design and layout the removal, relocation, or adjustment of the existing utility facilities and the placement of relocated or additional facilities within the project limits. This includes furnishing a utility with information regarding any environmental conditions when site assessments are performed as a required part of the Department's project investigation. This information shall be considered for **“informational purposes only”** since data may change from the time an investigation is completed until the time a report is reviewed.

C. Utility Responsibility

When a utility wants to locate its facility on the right-of-way and the Department is not required to furnish the utility with information regarding environmental conditions, the utility has the responsibility of determining if these conditions exist at its proposed site. The utility should perform a site assessment to accomplish this.

D. Site Assessments

When a utility needs to do site assessments (investigations), the procedures listed in the Department's Facilities Development Manual may be used as a guide. Specifically, Chapter 26 has information on archeological and historical assessments, and Chapter 21, Section 35, has information regarding contaminated site assessments. Copies of these can be obtained from the Department.

The Department recommends that site assessments be performed by a qualified historian, archeologist, or environmental consultant if the utility does not employ personnel specifically qualified for this work.

E. Discovery of Environmental Conditions

Whether the discovery of environmental conditions occurs during a site assessment, facility installation, or maintenance operation, **ALL WORK SHALL BE SUSPENDED IMMEDIATELY**. Failure to do so may result in financial responsibility (see section G) for the utility due to subsequent site assessments, mitigation, remediation, or possible fines. A checklist has been developed (appendix 96.97) to help utilities obtain the necessary information which may be asked of them by site investigators.

If the site poses a possible health risk, the local police and fire departments shall be notified immediately, and the utility shall take the necessary steps to provide for the safety of people and property in the area. After suspending operations, the utility shall contact the offices listed below depending upon the type of conditions discovered:

NOTIFICATION TABLE (NOTE: CALL ALL THAT APPLY) Utility Discovers Environmental Conditions while Working on Department Right-of-Way	
Category	Please Call
Archeological Sites or Historic Structures	
Historic structure	State Historic Preservation Office 608/264-6506
Archeological site	State Historic Preservation Office 608/264-6507
Burial	Burial Sites Preservation Office 608/264-6503 or 800/342-7834
Utility project but no Department project	District utility permit coordinator or chief maintenance engineer ¹
Department project	Construction project manager or district construction supervisor ¹
Contaminated Soils, USTs, LUSTs, etc.	
Local Department of Natural Resources Office ²	See appendix 96.96 for contacts
Utility project but no Department project	District utility permit coordinator or chief maintenance engineer ¹
Department project	Construction project manager or district construction supervisor ¹
1. These people shall also notify the Department's Bureau of Environment: Shirley Stathas (608) 266-8216 Archeological Sites/Historic Structures Shar TeBeest (608) 266-1476 Contaminated Soils, USTs, LUSTS, etc. 2. Required under Wisconsin law.	

The Department will notify the utility when it can resume its operation.

F. Utility Facility Placement Options

When environmental conditions are discovered in the right-of-way, the Department of Natural Resources (DNR) or State Historic Preservation Office (SHPO) shall determine whether a utility can locate its facility within the affected area. Based upon their decision, the following may occur:

1. The utility entirely avoids the affected area:
 - a. The DNR or SHPO mandate that the area shall be left in its natural state, and no utility facilities shall be allowed in the area.
 - b. The utility decides that it wants to locate in another area and avoid possible delays to its project due to site assessments, remediation, mitigation, or the possible decision noted in 1a
2. The utility can locate around or through the affected area:
 - a. The DNR or SHPO orders the site to be completely remediated or mitigated before any utility installation can take place. The utility would then have a clear corridor in which to locate its facility.
 - b. The DNR or SHPO decide that the area can be left in its natural state, but any area that is disturbed or affected by the utility operation (based upon DNR's or SHPO's assessment) has to be remediated or mitigated. The utility may also elect to go around the area, if possible, and avoid remediation or mitigation.
 - c. The DNR or SHPO decide that the area can be left in its natural state, and the conditions do not have to be remediated or mitigated as long as the utility exercises extreme care to avoid any significant disruption to the area. In the case of an archeological or historical site, a utility may be allowed to place a facility in an area that was already disturbed. In the case of a hazardous materials site, a utility would have to utilize construction methods that would prevent any contamination from spreading.

Unless the Department has taken charge of the remediation or mitigation process due to a Department project, a utility that decides to locate its facility through an affected area, as described in 2a, b, and c, shall document in its permit application that it has contacted the DNR or SHPO and has received the proper authorization to locate in the area along with its proposed construction methods. These permits may be routed through the District's environmental coordinator or the Bureau of Environment as a final check.

G. Financial Responsibility

When a utility performs an initial site assessment on Department right-of-way – either with a project of its own or because a Department project is not required to obtain environmental information – the utility shall bear the cost of the assessment. No matter who performed the initial assessment or even if they were not done, a utility that discovers any environmental conditions shall **not** be responsible for assessment, mitigation, or remediation costs proved it had complied with section E of this policy and avoids the site by placing its facility in another location. The table below specifies who may have to pay for assessment, mitigation, or remediation costs depending upon the situation.

FINANCIAL RESPONSIBILITY TABLE: Utility Discovers Environmental Conditions while Working on Department Right-of-Way AND DECIDES TO LOCATE IN THE AFFECTED AREA	
Category/Activity	Who Pays for the Activity?
Archeological Sites or Historic Structures	
A) Site Assessments (Identification or evaluation surveys) ¹	
- Utility project but no Department project	Utility
- Department project	Utility or Department ²
B) Mitigation ¹	
- State Historic Preservation Office order	Utility
- No State Historic Preservation Office order	Utility
Contaminated Soils, USTs, LUSTs, etc.	
C) Site Assessments	
- Utility project but no Department project	RP or Department or Utility ³
- Department project	RP or Department or Utility ³
D) Remediation	
- Department of Natural Resources order	RP or Department or Utility ³
- No Department of Natural Resources order	Utility
1. Department policy is to not spend available resources for assessments or mitigation, but rather preserve archeological sites and historic structures in place. This is in accordance with Section 106 of the National Historic Preservation Act. 2. Applicable only when the Department is required to obtain environmental information for its project. 3. If a utility fails to comply with section E of this policy, it may be responsible for a percentage of the costs depending upon how much worse the situation became due to the utility's actions. If the Department is not the RP, then a utility which incurs costs due to encountering contaminated soils, USTs, or LUSTs will have to recover them from the RP. RP = Responsible Party (owner of the source of the hazard as determined by DNR)	